



April 18, 2007

H.R. 1257 - Shareholder Vote on Executive Compensation Act

Floor Situation

H.R. 1257 is being considered pursuant to a modified open rule with a preprinting requirement for amendments. The rule:

- Provides one hour of debate equally divided and controlled by the Chairman and Ranking Member of the Committee on Financial Services.
- Waives all points of order against consideration of the bill except for clauses 9 (earmarks) and 10 (PAYGO) of Rule XXI.
- Makes in order only those amendments that are preprinted in the Congressional Record on or before Tuesday, April 17, 2007, or are pro forma amendments for the purpose of debate.
- Allows the Chair to postpone consideration of the bill at such time as may be designated by the Speaker.
- Provides one motion to recommit with or without instructions.

This legislation was introduced by Representative Barney Frank (D-MA) on March 1, 2007. H.R. 1257 was ordered to be reported, as amended, from the Committee on Financial Services, by a recorded vote of 37-29, on March 28, 2007. ([FC-26](#))

Background

In their annual proxy statements, publicly traded corporations must disclose the total compensation of the highest-paid executives; it is optional for corporations to provide any additional information regarding management compensation. Currently, CEOs serve at the pleasure of the board of directors who set executive pay and are elected by the shareholders. In addition, the overwhelming majority of issuers have executive compensation set by the compensation committee, which is comprised of the independent members of the Board of Directors.

Through securities laws and regulations, there have been attempts to toughen the negotiating position of shareholders by requiring lucid disclosure of CEO pay, requiring a

shareholder vote on executive pay packages, and making boards more alert to shareholder interests.

In 1992, the Securities and Exchange Commission (SEC) began to require that proxy statements include pay tables, detailing several categories of pay for the top five executives, including base salaries, bonuses, deferred, and incentive-based compensation, including stocks and stock options.

In 2006, SEC Chairman Christopher Cox updated the SEC disclosure rules. On July 26, the SEC voted to adopt revisions to its rules regarding disclosure of executive compensation. Then on December 22, the SEC adopted changes to its July 26 disclosure rules to more closely match the reporting of stock and option awards to the Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 Share-Based Payment. The December 22 changes have become contentious, with proponents saying the changes are needed to bring more transparency to executive compensation, and opponents arguing that they complicate executive compensation. Essentially the new disclosure rules require that public companies provide more disclosure of executive compensation than had previously been the case. In particular, they require greater disclosure of the company's compensation plans for the CEO, CFO, and highest paid executive officers and board members.

The revisions made by the SEC have brought forth Congressional proposals regarding executive compensation: (a) there should be additional disclosure of executive compensation to shareholders in place; and (b) there should be limits for tax purposes for the amounts deferred under a nonqualified deferred compensation plan.

On March 8, 2007, the Financial Services Committee held a hearing titled, "Empowering Shareholders on Executive Compensation: H.R. 1257, The Shareholder Vote on Executive Compensation Act."

Summary

H.R. 1257:

- Requires a separate shareholder vote to approve the compensation of executives for any proxy, consent, or authorization for an annual or other meeting of the shareholders occurring on or after January 1, 2009. The shareholder vote is not binding on the board of directors and is not to be construed as overruling a decision by the board, nor to create or imply any additional fiduciary duty by the board, nor should a nonbinding vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.
- Requires that in any proxy solicitation material for an annual or other meeting of the shareholders occurring on or after January 1, 2009, that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the

assets of an issuer, the person making such solicitation is required to disclose in the proxy solicitation material, in a clear and simple form in accordance with regulations of the Commission, any agreements or understandings that such person has with any principal executive officers of such issuer concerning any type of compensation that is based on or otherwise related to the acquisition, merger, consolidation, sale, or other disposition, and that has not been subject to a shareholder vote.

**Requires the disclosure of golden parachute compensation in any proxy solicitation material concerning an acquisition, merger, consolidation, sale, or other disposition, and that have not been subject to a nonbinding shareholder vote.*

- Requires the proxy solicitation material containing the disclosure to be put a separate shareholder vote to approve such agreements or understandings. A vote by the shareholders is not binding on the board of directors and is not construed as overruling a decision by the board, nor to create or imply any additional fiduciary duty by the board, nor should a nonbinding vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.
- Requires that no later than 1 year after the date of the enactment of this Act, the SEC will issue any final rules and regulations required by the amendments previously made.

Amendments Preprinted in the Congressional Record on April 17, 2007

Rep. Bachus (R-AL) The amendment provides that the bill amend Section 14 of the Securities Exchange Act of 1934, rather than Section 16.

Rep. Campbell (R-CA) The amendment provides that a shareholder advisory vote would not be required in the case of an issuer that requires the members of its board of directors to be elected by a majority of the votes cast in an election for the board.

Rep. Frank (D-MA) The amendment provides that the bill amend Section 14 of the Securities Exchange Act of 1934, rather than Section 16.

Rep. Frank (D-MA) The amendment strikes “shall permit” and inserts “shall provide for” at Page 4, line 16 and Page 6, line 3. It also inserts “the corporation or” after “binding on” at Page 4, line 22 and Page 6, line 6.

Rep. Garret (R-NJ) The amendment would establish two triggers be met before a shareholder vote on an executive compensation package could take place: If the executive compensation proposal exceeds by 10% or more the average compensation for comparable positions in companies within the issuer’s industry and among companies with comparable total market capitalization (as determined by the SEC), then there shall be non-binding vote conducted by the shareholders.

Rep. Jackson-Lee (D-TX) The amendment requires that any vote taken by the shareholders regarding executive compensation and the golden-parachute must be prominently displayed on the issuer's Internet website (if the issuer maintains an Internet website).

Rep. McHenry (R-NC) The amendment would require a shareholder who is casting the non-binding advisory vote to disclose to their beneficiaries whether such vote was cast to approve or disapprove the compensation.

Rep. Price (R-GA) The amendment requires the Securities and Exchange Commission (SEC) to conduct a study to determine whether a separate non-binding vote would hinder a publicly traded company's ability to compete for the best available candidates for its officers and directors. If the SEC finds that the rules will hamper a company's ability to compete for the best candidates then the non-binding shareholder vote will not be required.

Rep. Price (R-GA) The amendment in the nature of a substitute would strike the text of the bill and replace it with a Congressional finding that the shareholder disclosures related to executive compensation required by the SEC rules issued in 2006 provide a complete review for shareholders approval of executive compensation.

Rep. Price (R-GA) The amendment states that shareholders permitted to vote in the non-binding advisory vote are not eligible to make additional compensation proposals that would be included in the proxy materials.

Rep. Putnam (R-FL) The amendment would allow issuers to be exempt from the non binding shareholder advisory vote on executive compensation if the issuer provides the majority of their executive compensation in the form of non-qualified deferred compensation (NQDC).

Rep. Roskam (R-IL) The amendment strikes "or other meeting of the shareholders" and inserts "meeting of the shareholders (or a special meeting in lieu of the annual meeting)" at Page 4, line 14 and Page 5, line 7.

Rep. Sessions (R-TX) The amendment tasks the Securities and Exchange Commission (SEC) with collecting information regarding 1) the identity of all persons or entities that spend significant funds to influence this vote; 2) the amount spent; and 3) the activities on which these funds were spent.

Cost

Based on information from the SEC, CBO estimates that implementing H.R. 1257 would cost about \$1 million in 2008 to develop regulations, and less than \$500,000 per year thereafter to review and monitor compliance by companies affected by the regulations.

Such spending would be subject to the availability of appropriated funds; enacting the bill would not affect direct spending or receipts.

Staff Contact

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